

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, April 13, 2011, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

BOARD MEMBERS PRESENT: Robert Bartholomew
Tom Day
Walter Schmidt
Nancy Bonniwell
Richard Bayer

BOARD MEMBERS ABSENT: None

SECRETARY TO THE BOARD: Nancy M. Bonniwell

OTHERS PRESENT: Town of Merton Board of Adjustment
Peggy S. Tilley, Senior Land Use Specialist
Robert & Emily Lechtenberg, BA11:011, owners
Pete Davis, BA11:011, agent
Parrish & Alicia Sandefur, BA11:010, owners
Kurt Bartel, BA11:010, agent
Jacob Bohmann, BA11:013, agent
Dave Wick, BA11:013, owner
Bill White, BA11:012, owner
Lauri Gebhard-White, BA11:012, owner
Tom Hignite, Miracle Homes, BA11:012, designer
Tom Engel, BA11:012, agent

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

ELECTION OF OFFICERS:

Mr. Day *I make a motion to elect Mr. Bartholomew as Chairman.*

The motion was seconded by Ms. Bonniwell and carried unanimously.

Ms. Bonniwell *I make a motion to elect Mr. Day as Vice-Chairman.*

The motion was seconded by Mr. Schmidt and carried unanimously.

Mr. Bartholomew *I designate Ms. Bonniwell as Secretary.*

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Day *I make a motion to approve the Summary of the Meeting of March 9, 2011 with the inclusion of Atty. Kathryn Gutenkunst to the list of Others Present.*

The motion was seconded by Mr. Bayer and carried with four yes votes. Mr. Schmidt abstained from voting.

NEW BUSINESS:

BA11:011 ROBERT LECHTENBERG (OWNER) PETE DAVIS, JOHNSON DESIGN (AGENT):

Ms. Bonniwell *I make a motion to approve the request for variances from the road setback, shore and floodplain setback, floor area ratio and open space requirements of the Ordinance, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report with the following modifications:*

Condition No. 1 shall be modified to read as follows: "The existing non-conforming shed that is located half-way between the house and the lake shall be removed from the property within 6 months of the issuance of a Zoning Permit for the proposed garage construction. The existing shed near the lake (identified as a boathouse on the survey) shall be modified so that it meets the definition of a boathouse within 6 months of the issuance of a Zoning Permit for the attached garage construction. This shall be accomplished by the installation of garage-type doors on the lakeside of the structure. A Zoning Permit must be obtained for the work to the boathouse."

Condition No. 2 shall be modified to read as follows: "The proposed garage shall not exceed 22 ft. by 22 ft. in size (484 sq. ft.) (no more than 18.94% floor area ratio)."

The reasons as stated in the Staff Report shall be modified to remove reference to the removal of the boathouse structure.

The motion was seconded by Mr. Bayer and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the road setback, shore setback, floodplain setback, floor area ratio and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to allow the construction of an attached garage addition to the residence subject to the following conditions:

1. The existing non-conforming shed and the existing non-conforming boathouse shall be removed from the property within 6 months of the issuance of a Zoning Permit for the proposed garage construction.
2. The proposed garage shall not exceed 22 ft. by 22 ft. in size (484 Sq. ft.).
3. The proposed garage must be located at least 10 ft. from the side lot lines and from the base setback line of the road, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset/setback requirements.
4. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
5. Prior to the issuance of a Zoning Permit, a revised set of building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
6. A detailed cost estimate including a fair market estimate of materials and labor must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
7. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed garage, in conformance with the above condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
8. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the Plat of Survey required in condition No. 7.

9. No retaining walls are proposed nor approved herein. Any proposed retaining walls must comply with all applicable Ordinance requirements unless additional variances are approved by the Waukesha County Board of Adjustment.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, as conditioned, will allow the construction of a reasonably sized attached garage addition to the existing residence. The existing residence does not have a garage and as conditioned, two very non-conforming structures will be removed from the property. Park Dr. is a dead end road on a peninsula and is therefore not heavily traveled. To require the petitioner to comply with the road setback requirement would be unnecessarily burdensome in that it would not provide any area for a garage to be constructed. Furthermore, as conditioned the garage will be set back a minimum of 10 ft. from the right-of-way. Since the property is located on a peninsula, it is bounded on two sides by the lake. To require compliance with the shore and floodplain setback would again prevent the petitioner from constructing a garage on the site. The garage, as proposed, will be located on the opposite side of the road from the lake on the south side of the property and will be constructed in the most ideal place on the property for a garage. Therefore, it is reasonable to allow a minimal amount of relief from the shore and floodplain setback requirements to allow the construction of the garage.

The property does not contain sufficient acreage to comply with the open space requirement. To require compliance with the open space requirement would render the property unbuildable. With the removal of the non-conforming shed and the non-conforming boathouse, and the construction of a 22 ft. by 22 ft. garage, the property will have a floor area ratio of approximately 17% (1,800 sq. ft.). Again, if the petitioner is held to the Ordinance requirements relative to floor area ratio and open space, no garage could be constructed on the site.

The approval of the requested variances, as conditioned above, will result in the construction of a reasonably sized attached garage, in the most ideal location on the property and the removal of two very non-conforming structures. Therefore, the approval of this request, as conditioned, would be within the purpose and intent of the Ordinance.

BA11:013 DAVE WICK (OWNER) JACOB BOHMANN DESIGN (AGENT):

Mr. Schmidt

I make a motion to deny the request for variances from the road setback and offset requirements but approve the request for variances from the floor area ratio and open space requirements of the Ordinance in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report.

The motion was seconded by Mr. Day and carried unanimously.

The Planning and Zoning Division staff's recommendation was for denial of the request for variances from the road setback and offset requirements of the Waukesha County Shoreland and Floodland Protection Ordinance but approval of the request for variances from the floor area ratio and open space requirements of the Ordinance to allow the construction of a new single-family residence with attached garage, decks, and patio subject to the following conditions.

1. The proposed residence, including the total square footage of the first and second floors of the residence, attached garage, any covered decks, covered patios and/or covered porches, etc, shall not exceed 19.5% of the lot area.
2. The footprint of the residence and attached garage, including any covered porches, covered decks, covered patios etc shall not exceed 1,500 sq. ft. in size. The attached garage must be a minimum of 400 sq. ft. in size as measured from outside wall to outside wall with overhangs not to exceed two feet.
3. The residence and all other appurtenances must be at least 10 ft. from the north lot line and 10 ft. from the south lot line, as measured to the outer edges of the walls and any windows/bump outs, fireplaces, etc. that extend further out from the structure than the walls, with overhangs not to exceed two (2) ft. in width. Patios and decks must be a minimum of 6 ft. from the lot lines. Any sidewalks, stairs, or walkways along the sides of the residence must be located 10 ft. from the side lot lines unless they are considered integral to an approved deck or patio in which case they may be as close as 6 ft. to the side lot lines.
4. The residence and attached garage and all other appurtenances must comply with the road and shore setback requirements of the Ordinance as measured to the outer edges of the walls and any windows/bump outs that extend further out from the structure than the walls, with overhangs not to exceed two (2) ft. in width.
5. The proposed residence must also conform to the height requirements of the Ordinance.
6. No new detached structures are permitted.
7. All proposed retaining walls must comply with all applicable Ordinance requirements.
8. Prior to the issuance of a Zoning Permit, a complete set of scaled house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
9. Prior to the issuance of a Zoning Permit, a Stake-Out Survey showing the location of the proposed residence, attached garage, any proposed decks or patios, as well as any proposed sidewalks, stairs, walkways and retaining walls in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

10. In order to ensure the construction does not result in adverse drainage onto adjacent properties, a detailed Grading and Drainage Plan, showing existing and proposed grades, and the location of all proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. This grading plan may be combined with the plat of survey required in Condition No. 9. It should be noted that any grading not considered by Waukesha County Planning and Zoning Division Staff to be necessary backfill and excavation will require a Conditional Use Permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variances from the road setback and offset requirements of the Ordinance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Because a new home is proposed, it is appropriate to require that the new residence be constructed in the most conforming location possible on the lot. Compliance with the road setback requirement will only require that the residence be relocated less than 2 ft. from the road. Compliance with the offset requirement will require that the residence be relocated less than 6 ft. from the north lot line. The petitioner has indicated that the existing well will be abandoned; therefore, the location of the existing well does not need to be taken into consideration when evaluating the home placement relative to the offset requirement. Furthermore, the petitioner has indicated that a new foundation will be poured for the new residence.

The property is non-conforming relative to lot size and lot width making strict adherence to the district regulations impossible. However, variances should only be granted to provide the minimum amount of relief necessary to allow the property to be used for a permitted purpose. In addition, variances should only be granted to accommodate physical limitations on the property and not the personal preferences or needs of the current property owner. As conditioned, a total footprint of 1,500 sq. ft. and a total floor area ratio of 19.5% of the lot size (not including the basement square footage) will allow the property to be used for a permitted purpose and will not be unnecessarily burdensome on the property owner. Furthermore, the approval of this request, as conditioned, will permit the construction of a new single-family residence with an attached garage that will be appropriately sized for the lot and not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA11:005 PAYNE & DOLAN, INC. (d.b.a. Waukesha Lime & Stone) (OWNER) RODNEY W. CARTER (AGENT):

This case was withdrawn by the petitioner on April 12, 2011. Therefore, no action was taken by the Board relative to this request.

BA11:010 PARRISH & ALICIA SANDEFUR (OWNERS) CURT BARTEL (AGENT):

Mr. Schmidt

I make a motion to strike the variance request for remodeling a non-conforming structure in excess of 50% of its fair market value requirements of the Ordinance because it is unnecessary as the proposal will not exceed 50% of the fair market value and approve the request for a special exception from the offset requirement of the Ordinance, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report with the exception of the last paragraph of the reasons stated.

The motion was seconded by Ms. Bonniwell and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for a variance from the remodeling a non-conforming structure in excess of 50% of its fair market value requirements of the Waukesha County Floodland and Shoreland Protection Ordinance and **approval** of the request for a special exception from the offset requirement of the Ordinance to allow the construction of the porch addition and the interior remodeling of the residence, subject to the following conditions:

1. The proposed porch addition must be located no closer to the side lot lines than the existing residence, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset requirements.
2. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed porch addition, in conformance with the above condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
3. A detailed cost estimate including a fair market estimate of materials and labor for the porch addition and the proposed interior remodeling must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, as conditioned, will allow the petitioner to remodel the existing

residence and to construct a porch addition to the road side of the residence. The residence was constructed with the benefit of a variance relative to offset. The residence complies with all of the other locational and size requirements of the Ordinance. To require the porch addition to be constructed two feet smaller on each side than the existing residence would be unnecessarily burdensome on the property owner and would not be aesthetically pleasing. Furthermore, the property is set well back from the road and existing vegetation along the lot lines provides some screening of the residence from the neighboring properties.

As noted above, a complete cost estimate for the remodeling and porch addition has not been provided. However, due to the slight nonconformity of the residence and the fact that the structure was constructed with the benefit of variances, the Planning and Zoning Division Staff feels that even if the detailed cost estimates of the proposed project result in the need for a variance from the 50% provision, such variance should be granted. The approval of this request would not be contrary to the public interest or welfare and will be within the purpose and intent of the Ordinance.

BA11:012 LAURI GEBHARD & BILL WHITE (OWNERS) THOMAS ENGEL, MIRACLE HOMES (AGENT):

Mr. Schmidt

*I make a motion to **approve** the request for variances from the floor area ratio and open space requirements of the Ordinance, in accordance with the Staff's recommendation, as stated in the Staff Report and for the reasons stated in the Staff Report with the following modification to the conditions:*

Condition No. 1 shall be modified to read as follows: "The residence, including the total square footage of the first and second floors of the residence, attached garage, any covered decks, covered patios and/or covered porches, etc., shall not exceed 2,290 sq. ft. in size (floor area ratio of 18.3%)."

The motion was seconded by Ms. Bonniwell and carried with four yes votes. Mr. Day voted no.

The Planning and Zoning Division staff's recommendation was for **approval** of the request for variances from the floor area ratio and open space requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to allow the construction of a new single-family residence with attached garage and deck on the property, subject to the following conditions:

1. The residence, including the total square footage of the first and second floors of the residence, attached garage, any covered decks, covered patios and/or covered porches, etc., shall not exceed 2,582 sq. ft. in size as proposed.
2. The proposed deck and open porch shall not be enclosed or roofed.

3. The proposed residence, attached garage, and deck/porch shall comply with all of the applicable offset and setback requirements of the Ordinance.
4. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
5. Lots 46 and 47 Map of Lower Clarks Park shall be combined by a Certified Survey Map. The Certified Survey Map must be approved by the Town and County and recorded in the Register of Deeds Office prior to the issuance of a Zoning Permit for the new residence.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request will allow the construction of a new single-family residence with an attached garage that is located in a conforming location but will exceed the floor area ratio and open space limitations of the Ordinance. The property does not have sufficient acreage to comply with the open space requirements of the Ordinance. To require compliance with the open space provisions would render the property unbuildable. Although the proposed floor area exceeds the maximum allowed in the Ordinance, it is less than the amount of floor area that was approved by the Board in 1996 for additions to the residence and only results in approximately 200 square feet less open space than the existing residence. Furthermore, the property is surrounded on three sides by parkland and as conditioned, the lots will be permanently combined by Certified Survey Map, bringing them further into compliance with the Ordinance requirements. The approval of this request would not be contrary to the public interest or welfare. Therefore, the approval of this request would be within the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION: None.

ADJOURNMENT:

Mr. Schmidt

I make a motion to adjourn this meeting at 8:51 p.m.

The motion was seconded by Mr. Day and carried unanimously.

Respectfully submitted,



Nancy M. Bonniwell
Secretary, Board of Adjustment